

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

OAKLAND UNIFIED SCHOOL
DISTRICT.

OAH Case No. 2015030906

ORDER DENYING REQUEST FOR
CONTINUANCE WITHOUT
PREJUDICE

On August 3, 2015, the parties filed a joint request for continuance. The parties state that parent has recently retained the services of an attorney and the attorney needs additional time to prepare evidence and witnesses for hearing, which is currently scheduled to begin on August 11, 2015. The parties ask that the hearing be set to begin on October 20, 2015, because Student's attorney has "hearings throughout August and September and the first mutual availability with the District's attorney for hearing is October 20-21, 2015." This is the second request for continuance in this matter.

A due process hearing must be conducted and a decision rendered within 45 days of receipt of the due process notice unless an extension is granted for good cause. (34 C.F.R. § 300.515(a) & (c) (2006); Ed. Code, §§ 56502, subd. (f), 56505, subd. (f)(3); Cal. Code Regs., tit. 1, § 1020.) As a result, continuances are disfavored. Good cause may include the unavailability of a party, counsel, or an essential witness due to death, illness or other excusable circumstances; substitution of an attorney when the substitution is required in the interests of justice; a party's excused inability to obtain essential testimony or other material evidence despite diligent efforts; or another significant, unanticipated change in the status of the case as a result of which the case is not ready for hearing. (See Cal. Rules of Court, rule 3.1332(c).) The Office of Administrative Hearings considers all relevant facts and circumstances, including the proximity of the hearing date; previous continuances or delays; the length of continuance requested; the availability of other means to address the problem giving rise to the request; prejudice to a party or witness as a result of a continuance; the impact of granting a continuance on other pending hearings; whether trial counsel is engaged in another trial; whether the parties have stipulated to a continuance; whether the interests of justice are served by the continuance; and any other relevant fact or circumstance. (See Cal. Rules of Court, rule 3.1332(d).)

OAH has reviewed the request for good cause and considered all relevant facts and circumstances. The request is:

☒ Denied. All hearing dates and timelines shall proceed as calendared. Here, the parties have requested a continuance of the hearing dates, and OAH is inclined to grant the continuance, but not as long a continuance as requested by the parties. The parties should meet and confer regarding earlier dates for hearing and submit sworn declarations showing good cause regarding any unavailability for hearing dates along with another request for continuance. This matter has been pending since March 19, 2015, so this matter will be calendared before other matters filed later. If the parties are unable to agree on hearing dates, they may request OAH to select dates, but should still include sworn declarations regarding any unavailability.

IT IS SO ORDERED.

DATE: August 4, 2015

/s/

MARGARET BROUSSARD
Presiding Administrative Law Judge
Office of Administrative Hearings